

**CRITIQUE OF THE REPORT OF THE SPECIAL INVESTIGATIVE COUNSEL  
REGARDING THE ACTIONS OF THE PENNSYLVANIA STATE UNIVERSITY  
RELATED TO THE CHILD SEXUAL ABUSE COMMITTED BY GERALD A.  
SANDUSKY (“THE FREEH REPORT”)**

**INTRODUCTION**

On July 12, 2012, Freeh Sporkin & Sullivan, LLP (hereinafter, “FSS”) released its Report Regarding the Actions of The Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky (hereinafter, the “Freeh Report” or the “Report”).<sup>1</sup> The Report states that FSS was engaged by The Pennsylvania State University’s (“PSU”) Board of Trustees<sup>2</sup> to:

perform an independent, full and complete investigation of: [t]he alleged failure of Pennsylvania State University personnel to respond to, and report to the appropriate authorities, the sexual abuse of children by former University football coach Gerald A. Sandusky (“Sandusky”); [and] [t]he circumstances under which such abuse could occur in University facilities or under the auspices of University programs for youth.

Freeh Report at 8. The Report concludes that former PSU President Dr. Graham B. Spanier and three other former PSU officials (former Senior Vice President-Finance and Business Gary C.

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<sup>1</sup> The Freeh Report has already been amended. FSS has released an “errata sheet,” which corrects a small number of typographical errors and makes one substantive change. Regarding an email exchange between former Senior Vice President-Finance and Business Gary C. Schultz and former outside legal counsel Wendell Courtney, the errata sheet notes that the statement “I was never aware that Penn State police investigated inappropriate touching in a shower in 1998” was made by Courtney, not Schultz. *See* Freeh Report errata sheet, available at <http://www.thefreehreportonpsu.com/Louis-Freeh-Report-on-Penn-State-ERRATA-SHEET.pdf> (last visited Aug. 13, 2012).

<sup>2</sup> Before having seen the Report, the Board of Trustees agreed to waive attorney-client privilege and allow FSS Senior Managing Partner Louis J. Freeh, in the style of a criminal prosecutor, to hold a national press conference announcing his findings. None of the individuals condemned by the Report was given an opportunity to review the Report, much less to offer a rebuttal, before it was published to the nation. Video of the June 12, 2012, FSS press conference is available at <http://thefreehreportonpsu.com/> (last visited Aug. 16, 2012).

Schultz, former Athletic Director Timothy M. Curley, and former Head Football Coach Joseph V. Paterno) “failed to protect against a child sexual predator harming children for over a decade,” “concealed Sandusky’s activities from the Board of Trustees, the University community and authorities,” and “exhibited a striking lack of empathy for Sandusky’s victims... [and] exposed [one victim] to additional harm.” *Id.* at 14.

A careful review of the evidence that allegedly supports these incendiary conclusions reveals that the Freeh Report falls far short of being “an independent, full and complete investigation.” Rather, the results-oriented Report makes unsupported leaps from an incomplete record.

#### **EXECUTIVE SUMMARY OF PRINCIPAL ERRORS AND OMISSIONS**

- Dr. Spanier has been telling the truth from Day One. Dr. Spanier has said, over and over again, that in February 2001 the only information he was given was that a staff member had observed “horseplay” between Sandusky and a Second Mile youth in the athletic department shower area that made the staff member uncomfortable. He was *never* told about any sexual misconduct involving Sandusky. There is no reliable evidence to contradict this crucial point, and Schultz and Curley, the only possible witnesses, support Dr. Spanier on it. The Freeh Report blithely ignores this lack of evidence and rushes to the judgment that Dr. Spanier and his advisors “repeatedly concealed” child abuse at PSU.
- In an effort to expand the scope of his condemnation of Dr. Spanier and others, Freeh (“Special Investigative Counsel” or “SIC”) acts as if the 1998 criminal investigation of an incident involving Sandusky and a minor concluded that sexual abuse had occurred and that Dr. Spanier and others concealed that fact. Nothing could be further from the truth. No one interfered in any way with this investigation, which concluded that nothing criminal had occurred. There was thus nothing to conceal, and the 1998 incident proves nothing.
- That leaves the incident in February 2001. SIC quotes former assistant football coach Michael McQueary at great and detailed length about this incident, ignoring the fact that SIC did not interview McQueary, that McQueary never spoke with Dr. Spanier, and that McQueary’s testimony is contradicted in important respects by Dr. Jonathan Dranov. Whereas now McQueary says he saw Sandusky and a child actually engaged in sexual intercourse, back in February 2001, only a few hours after the incident (and before he spoke to any PSU representative),

McQueary told his family friend Dr. Dranov that he had not seen any sexual abuse and had only heard ambiguous sounds. SIC's rush to judge Dr. Spanier and others is proven by the fact that SIC made a deliberate decision not to even attempt to interview Dr. Dranov and by the fact that the Freeh Report completely ignores Dr. Dranov's public testimony. SIC ignored Dr. Dranov because his testimony was inconsistent with the narrative of condemnation that SIC wanted to write.

- Why would these four reputable men cover up a criminal act of the sort McQueary now describes? Freeh's only answer is: to protect PSU from adverse publicity. While no chief executive wants bad publicity for his institution, Dr. Spanier had no history, in more than twenty years of being in top management at PSU and the University of Nebraska, of trying to sweep important problems under the rug. And all of his life, from a childhood in which he himself was physically abused to his professional study of family sociology, argues that he would never have allowed child abuse to continue if he had known about it. SIC cites no evidence to support their adverse-publicity theory, because there is none.
- SIC's narrative of condemnation is filled with the language of crime and immorality without facts to justify that language. For example, the Report criticizes Dr. Spanier and others for allowing Sandusky to retire honorably in 1999, despite their alleged knowledge that he was a "suspected child predator." The fact, acknowledged elsewhere in the Report, is that the 1998 incident had been fully investigated and the finding was that no criminal conduct had taken place. Moreover, SIC concludes elsewhere in the Report that Sandusky's 1999 retirement had nothing to do with the 1998 incident.
- SIC failed or was unable to interview nearly all of the individuals whose alleged actions and/or inactions are the central focus of the Report.<sup>3</sup> In place of these essential interviews, SIC makes unexplained credibility determinations based on a selective use of documents and testimony. SIC's prosecutorial approach is demonstrated by this failure to analyze ambiguous and conflicting evidence.
- Because the Report fails to identify almost all of the 430 individuals who it says were interviewed and provides only a tiny subset of the 3.5 million pieces of electronic data and documents that it says were reviewed, it is impossible to know what other exculpatory evidence was ignored by SIC. By omitting identifying information, SIC has afforded the reader, and in particular the men whom SIC accuses, no opportunity to evaluate the reliability of the cited evidence and the conclusions drawn from that evidence.

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<sup>3</sup> McQueary and former Director of Public Safety Thomas Harmon were not interviewed "[a]t the request of the Pennsylvania Attorney General." Freeh Report at 12. Sandusky, Schultz, Curley, and Courtney declined to be interviewed on the advice of counsel. *Id.* The prosecutor who declined to prosecute Sandusky in 1998 and the Executive Director of the Second Mile also declined to be interviewed. *Id.* at 46, 78. Paterno died before being interviewed by SIC. *Id.* at 53.

- The Freeh Report is also sloppy and unreliable in many details. For instance, it quotes Dr. Spanier’s language in one email as if Dr. Spanier were discussing Sandusky, when in fact the email clearly relates to a PSU basketball coach. The Report is also indiscriminate in its choice of sources, at one point even quoting Sandusky’s lawyer (presumably quoting Sandusky) as justifying an important conclusion of the Report.
- The Report exaggerates the thoroughness of its investigation. For example, it says the Freeh Group analyzed “over 3.5 million pieces of electronic data and documents”, without disclosing that most of the relevant material, emails from February 2001, could mostly not be retrieved and therefore could not be analyzed. And the boast that 430 interviews were conducted is hollow when, as noted above, investigators failed to interview Dr. Dranov, or even to ask him for an interview.

## ANALYSIS

### I. Threshold Issues

#### A. Failure to Interview Key Witnesses

As noted above, only one of the central figures in the Freeh Report – Dr. Spanier – was actually interviewed by SIC. On the advice of counsel, Sandusky, Schultz, and Curley declined to be interviewed. Freeh Report at 12. Paterno was not interviewed before his death. *Id.* at 53. The prosecutor who declined to prosecute Sandusky in 1998, the Executive Director of the Second Mile, and former outside legal counsel Wendell Courtney also declined to be interviewed. *Id.* at 12, 46, 78. Surprisingly, the Pennsylvania Attorney General requested that SIC refrain from interviewing McQueary and Harmon, and SIC agreed to go along with that request. *Id.* at 12.

Despite SIC’s failure to obtain interviews of those at the heart of the accusations against PSU, the Freeh Report claims that “[a]lthough the information these individuals could have provided would have been pertinent to the investigation, the findings contained in this report represent a fair, objective and comprehensive analysis of facts.” Freeh Report at 12. The

Report cannot be considered “fair, objective and comprehensive” without these interviews. The factual issue at the center of the investigation – what McQueary told Paterno, Curley, and Schultz (and, more important, what Curley and Schultz told Dr. Spanier) about what he (McQueary) observed and did not observe in the Lasch Building locker room in February 2001 – hinges in significant part upon the shifting statements and reliability of McQueary, and what he actually said to Paterno, Curley, and Schultz.

The resolution of this factual dispute also necessarily hinges upon the existence – or not – of corroborating evidence from persons with whom McQueary, Curley and Schultz discussed the February 2001 incident in the hours and days after it occurred. Dr. Jonathan Dranov, to whom McQueary recounted what he had seen just hours after the incident (and before describing it to any representative of PSU), testified at Sandusky’s criminal trial that McQueary’s report of the incident to him was that he had *not* seen any sexual abuse. Yet SIC did not even *attempt* to interview Dr. Dranov, his trial testimony was ignored, and he is mentioned only once in a footnote, not even by name. *See* Freeh Report at 67 n. x (“John McQueary and his supervisor (a medical doctor) heard Mike McQueary’s initial report of the Lasch Building events the evening it happened. John McQueary advised his son to report the matter to Paterno, and neither John McQueary nor his boss advised him to immediately call the police.”<sup>4</sup>) (internal citations omitted). The failure to request an interview with Dr. Dranov, whom SIC knew had information relevant to any assessment of McQueary’s reliability on the critical issue of what exactly McQueary reported to PSU officials, renders the Report fatally incomplete. (One wonders how there could have been 430 people more important than Dr.

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<sup>4</sup> Not recommending that McQueary call the police is entirely consistent with Dr. Dranov’s testimony that the incident described by McQueary was not of a sexual nature.

Dranov to interview.) Similarly, Wendell Courtney, from whom Schultz requested legal advice two days after the 2001 shower incident, Freeh Report at 69,<sup>5</sup> and the Executive Director of Second Mile, with whom Curley met to discuss the accusations against Sandusky, *id.* at 78, could have also provided information regarding what McQueary was telling people about the incident immediately after it happened. Both Courtney and the Executive Director of Second Mile declined to be interviewed. Without the glaring omission of an interview of Dr. Dranov, the Report cannot be seen as evenhanded; and without the interviews of Courtney and the Executive Director of Second Mile, it cannot be seen as comprehensive.

#### **B. Incomplete Access to University Email from Key Time Periods**

The Freeh Report states that “the extensive contemporaneous documentation that Special Investigative Counsel collected provided important insights, even into the actions of those who declined to be interviewed.” Freeh Report at 12. The Report trumpets that SIC reviewed millions of PSU documents, *id.* at 9, and “had unfettered access to… data and documents maintained throughout the University,” *id.* at 11, but does not alert the reader that most of the PSU administration emails before 2004 are irretrievable, having been wiped out in 2004 in a computer system changeover. Thus, SIC is unable to accurately reconstruct the context surrounding the few 2001 email exchanges that survived and that allegedly support a sinister cover-up by Paterno, Curley, Schultz, and Spanier. The emails cited in the Report come from a file separately maintained by Schultz and represent only a small fraction of the contemporaneous emails that would have been available before the 2004 system changeover.

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<sup>5</sup> As Dr. Spanier stated during his July 6, 2012 interview with Special Investigative Counsel, Mr. Courtney recently informed Dr. Spanier that although he does not recall the specific consultation in 2001, he (Courtney) reported that he must have concluded that the 2001 episode was not reportable, since if it had been reportable, he would have insisted that it be reported and would have documented that advice in his file.

### C. Failure to Identify Witnesses with Relevant Information

The Freeh Report says that SIC conducted “over 430 interviews of key University personnel and other knowledgeable individuals” and that interview citations “have been redacted to protect the identity of people who spoke with the Special Investigative Counsel.” Freeh Report at 9-10.<sup>6</sup> In a small number of instances, the Report makes clear that it is citing the statements of a particular interviewee, *see, e.g., id.* at 16 (paraphrasing Dr. Spanier’s statements in his interview with SIC), 52 (same re Detective Schreffler), and 53 (same re former PSU General Counsel Cynthia Baldwin), but most often it fails to identify the witness who allegedly provided relevant information. While witness confidentiality may be appropriate in some circumstances, in the context of a report that reads like an indictment of four previously-revered individuals, it is plainly unfair for SIC to make personally damning accusations without allowing the reader to review the evidence in detail.

The Report relies heavily on notes of SIC’s confidential interviews to suggest that PSU officials and others acted with nefarious motives to cover up child sexual abuse and to give preferential treatment to a known sexual predator. For example, having been unable to interview the prosecutor who declined to prosecute Sandusky in 1998, the Report cites the statements of “a senior administrator of a local victim resource center familiar with the 1998 incident” as alleged proof that the case against Sandusky was thwarted by the report of Counselor John Seasock.

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<sup>6</sup> The Report also states that information was gathered “with due regard for the privacy of... the documents reviewed” and therefore documents were assigned unique identifying numbers in the internal database maintained by SIC. Freeh Report at 9-10. Due regard for the sterling reputations of the accused individuals appears not to have been considered a factor by SIC. The Report does not explain why SIC chose to make a limited subset of the cited documents public as exhibits to the Report while withholding information about dates, authors, and content for all of the remaining documents.

Freeh Report at 46.<sup>7</sup> The Report credits the statement of a senior human resources officer at PSU as evidence that there was no human resources report of the 1998 incident because the matter was “sensitive” and was handled by Schultz alone. *Id.* at 49. Anonymous interview statements are set forth as supposedly reliable evidence for other critical conclusions, such as that: “Paterno was in control of the football facilities and knew everything that was going on,” thereby implying that Paterno had actual knowledge of every single thing that went on in the football facilities and thus had actual knowledge that Sandusky was preying on children (*id.* at 51); that Sandusky was given special treatment by PSU officials because the lump sum payment he was given at retirement has not been offered to any other retiring PSU employee (*id.* at 59); and that Curley participated in the alleged cover-up because he deferred to Paterno and other PSU officials “regardless of consequences” (*id.* at 75). Each of these erroneous conclusions is addressed in greater detail in Section II, below.

The Report fails to provide any identifying information that would allow the reader to confirm who said what on any particular point and to determine whether the statements made support the conclusions that SIC is so anxious to draw. Following the Report’s publication, dozens of interviewees have approached colleagues to say that what they said in their interviews was distorted and that they had provided SIC with other information not included in the Report that would contradict its conclusions about PSU officials; and some have suggested that their interviews had the tone of a witch hunt and that confrontational tactics were used. That is, in some witnesses’ minds, SIC interviewers appeared to be interested only in

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<sup>7</sup> Elsewhere, the Report first suggestively notes that Seasock received payments from PSU as an independent contractor – but then grudgingly acknowledges that SIC “did not find any evidence to suggest that these payments had any relation to Seasock’s work on the Sandusky case in 1998.” *Id.* at 45.

pejorative statements and then cherry-picked even among those answers. These methods are hardly the hallmark of an independent, fair and complete investigation.

Additionally, the Report offers no analysis of whether all of the 430 interview statements were consistent and which statements were deemed credible. Human nature being what it is, it is highly unlikely that all of the witnesses that SIC interviewed gave statements that were wholly consistent with each other. SIC's failure to acknowledge inconsistencies and to make their choices amongst contradictory information explicit is yet another demonstration of its prosecutorial intent.

#### **D. Citations to Unreliable Sources**

In the absence of interviews with key witnesses to the events at issue, the Report inexplicably relies on information from patently questionable sources, thereby suggesting that it is just as good as much more reliable evidence. For example, regarding Curley's March 2001 meeting with Sandusky, the Report adopts the version given by Sandusky's counsel, though it was presumably intended to exculpate Sandusky. Freeh Report at 77. Likewise, regarding Curley's March 2001 meeting with the Executive Director of the Second Mile, the Report relies on the statements of counsel for the Second Mile. *Id.* at 78. Apparently giving the same evidentiary weight to statements of counsel (who have no first-hand knowledge) as it does to statements of witnesses, SIC uses the above information from Sandusky's counsel and counsel for the Second Mile in its "key findings" regarding the 2001 incident. *See id.* at 64 (accepting as fact that "Curley told the Second Mile's executive director that Sandusky would not be permitted to bring children onto the Penn State campus *in order to avoid publicity issues*" (emphasis added)). The problem here is that a critical conclusion of the Report – that the four men condemned by the Report were motivated by a desire to avoid adverse publicity – is based on the

statement of an attorney for another party about one conversation eleven years ago at which the attorney was not present.

#### **E. Selective Use of Court Documents and Testimony**

The dates on which Sandusky's offenses took place are of critical importance in determining the reliability of the Report's conclusions. Freeh Report at 13. At various points, the Report relies on the Grand Jury Presentment or the Bill of Particulars and Amended Bill of Particulars in the Sandusky criminal case for information regarding the dates and locations of Sandusky's offenses. *See id.* at 14, 41, 54, 79. But the Report fails to cite testimony from the actual Sandusky trial that might establish these dates and places, with no explanation given for this obvious failure.<sup>8</sup> Further, as discussed in greater detail below, the Report omits discussion of the counts on which Sandusky was acquitted and ignores the impact of these jury findings on the allegations made by the Report against PSU officials.

Additionally, while citing the Bill of Particulars and Amended Bill of Particulars for relatively precise dates and locations of certain offenses alleged to have occurred on PSU's campus, the Report omits that both documents set out not exact dates, but only date ranges and say for nearly every victim that as "a child at the time of the crimes, [the victim] is unable to provide exact times and dates." *Compare* Freeh Report at 41, 54, 79, *with* 3/1/2012 Bill of Particulars, 5/18/2012 Amended Bill of Particulars, available at <http://www.co.centre.pa.us/media/sandusky.asp> (last visited Aug. 14, 2012). But the Report then uses specific dates to reach its critical conclusion that certain of Sandusky's crimes could have been prevented by PSU

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<sup>8</sup> Even assuming the transcripts from Sandusky trial were unavailable to SIC, the Report does not explain SIC's failure to cite to trial notes or news coverage of the trial, except in one instance where the Report cites a news article describing the testimony of former coach Richard Anderson. *See* Freeh Report at 40, 146 n. 60.

officials. *See* Freeh Report at 39, 54, 64, 79. For example, the Report concludes that “Sandusky engaged in improper conduct with at least two children in the Lasch Building” after the February 2001 incident, and “[t]hose assaults may well have been prevented if Spanier, Schultz, Paterno and Curley had taken additional actions to safeguard children on University facilities.” Freeh Report at 64. The Report identifies the two children as Victims 3 and 5, yet it does not – and cannot – cite a definitive finding that Victims 3 and 5 were assaulted on PSU’s campus on dates *after* February 2001. *Id.* at 79 (providing no citations); *see also* Amended Bill of Particulars at 2 (“[t]he Commonwealth is unable to provide specific dates” for offenses involving Victim 3); Grand Jury Presentment (alleging that the single offense involving Victim 5 occurred sometime during 1996-1998); Verdict Slip, available at <http://www.co.centre.pa.us/media/sandusky.asp> (last visited Aug. 14, 2012) (finding Sandusky guilty of “course of conduct” or “single event” for each victim, without additional interrogatories regarding dates).

The Report also cites to the transcript of the December 16, 2011 preliminary hearing in the Schultz and Curley criminal case, which is a record of the live testimony of McQueary and the read-in grand jury testimony of Paterno, Curley and Schultz. But the Report does not cite McQueary’s testimony at the Sandusky trial. In a crucial section on “McQueary’s Observations of Sandusky – 2001,” the Report misleadingly suggests that it is quoting and paraphrasing McQueary’s testimony from the “December 2011 Grand Jury hearing” *and* from “June 12, 2012 at Sandusky’s criminal trial,” but, in actuality, the Report cites only the December 16, 2011 preliminary hearing transcript and one other confidential interview; it does *not* cite McQueary’s June 12, 2012, testimony at Sandusky’s trial. *See* Freeh Report at 66-68, 151 n. 252-n.273. In another instance, the Report suggests that it is citing to the testimony of witnesses at the Sandusky trial (*see* Freeh Report at 65, stating “[a]ccording to the testimony of

witnesses in Gerald A. Sandusky’s (‘Sandusky’) trial in Centre County in June 2012”), but the actual citation is only to an interview conducted by SIC (*see id.* at 150, n.237-n.250). Yet again, the Report does not explain its failure to cite to the Sandusky trial transcripts or another source describing this trial testimony.

## **II. Specific Factual Errors, Omissions, and Unsupported Conclusions**

### **A. Alleged Concealment of the 1998 Sandusky Incident**

Among the most unsupportable portions of the Freeh Report are the “key findings” regarding PSU officials’ response to the 1998 incident, in which SIC concludes that the 1998 incident was investigated by police and child protective agencies and that no charges were filed against Sandusky because the investigation concluded that no sexual offense of any kind had occurred, but then ignores the finding of no sexual offense and concludes that Spanier, Schultz, Paterno and Curley were nonetheless at fault because they “did not even speak to Sandusky about his conduct,” “took no action to limit Sandusky’s access to Penn State facilities or took any measures to protect children on their campuses,” and “failed to report the 1998 investigation to the Board of Trustees.” Freeh Report at 39. That is, following a five-page account of the investigation into Sandusky’s behavior by police and child protective agencies and acknowledgments that police and counselors had concluded that “no sexual assault occurred” and that “the local District Attorney declined to prosecute Sandusky,” *id.* at 42-47, SIC then does an about-face and attempts to make an issue of alleged failures by PSU officials to take action against Sandusky following the incident, *id.* at 47-54.

Elsewhere, the 1998 incident is merged with the 2001 incident as supposedly further evidence that PSU officials knowingly concealed child sexual abuse by Sandusky. *See* Freeh Report at 16 (“in order to avoid the consequences of bad publicity, the most powerful

leaders at the University – Spanier, Schultz, Paterno and Curley – *repeatedly concealed* critical facts relating to Sandusky’s child abuse from the authorities, the University’s Board of Trustees, the Penn State Community, and the public at large”) (emphasis added); *id.* at 14 (“*consistent disregard* by the most senior leaders at Penn State for the safety and welfare of Sandusky’s child victims”) (emphasis added). Because the 1998 incident was dismissed by the District Attorney as not constituting a crime, *there was nothing to be concealed* by PSU officials or anybody else. Additionally, the Report inexplicably criticizes Spanier, Schultz, Paterno and Curley for “[a] decision... to allow Sandusky to retire in 1999, not as a suspected child predator, but as a valued member of the Penn State football legacy....” *Id.* at 17. After authorities concluded that no sexual offense had occurred in 1998, what possible basis was there for PSU to treat Sandusky as a “suspected child predator” upon his 1999 retirement? And even SIC does not contend that Sandusky’s retirement was in any way caused by the 1998 incident.

SIC’s conclusions regarding Dr. Spanier’s knowledge of the 1998 incident include statements that are without the slightest evidentiary support. The Report states, without citation, that “Spanier, Schultz, Paterno and Curley were kept informed of the investigation.” Freeh Report at 39. Dr. Spanier is specifically criticized for failing thereafter to limit Sandusky’s access to PSU and failing to declare Sandusky a “persona non grata” based on the 1998 incident. *Id.* at 51-52. In fact, Dr. Spanier was copied on only two emails relating to the 1998 incident: one did not name Sandusky or any other individual; and the other, titled “Jerry,” reported that an investigation had concluded that there was no criminal behavior and so the matter had been closed. *Id.* at Exs. 2-A, 2-E. There is simply no evidence to support the assertion that Dr. Spanier was “kept informed” of the 1998 investigation.

## **B. Innuendo Regarding Sandusky’s Retirement**

Also perplexing is the Freeh Report's six-page account of the terms and conditions of Sandusky's 1999 retirement from PSU and his receipt of emeritus status, all of which creates the innuendo that PSU officials were acting improperly, whereas the Report itself ultimately acknowledges that “[t]he Special Investigative Counsel found no evidence to indicate that Sandusky's retirement was related to the police investigation of him in 1998.” Freeh Report at 55-61. The details provided in the Report to suggest impropriety by PSU officials include:

- “Spanier approved a one-time lump sum payment to Sandusky of \$168,000.” *Id.* at 55.
- “Sandusky was also awarded ‘emeritus’ rank, with special privileges including access to the University’s East Area locker room complex. Sandusky’s positions in the University did not meet the general eligibility requirements for this honor, yet University administrators found themselves in a ‘bind’ because Spanier had promised the emeritus rank to Sandusky.” *Id.*

SIC’s prosecutorial intent is evident when these suggestive descriptions of the lump-sum payment and emeritus status are then followed by passing acknowledgments that Sandusky’s retirement package was *unrelated* to the 1998 incident. *See* Freeh Report at 59 (“While the \$168,000 lump sum payment made to Sandusky at his retirement in 1999 was unusual, the Special Investigative Counsel did not find evidence to show that the payment was related to the 1998 incident at the Lasch Building”); *id.* at 61 (“While the decision to grant Sandusky emeritus rank was unusual, the Special Investigative Counsel found no evidence to show that the emeritus rank was related to the 1998 events at the Lasch Building”). In fact, the severance payment to Sandusky was not unusual at PSU – a fact that SIC could have easily confirmed. Because at that time PSU was one of the few major universities that did not have contracts with prominent coaches, it was PSU’s tradition to treat coaches fairly after long service. A severance arrangement of a year’s salary would not have been unusual in this context, and in fact that practice was implemented more formally for assistant football coaches in subsequent years.

Additionally, SIC was told by several interviewees that Dr. Spanier was generous in awarding the emeritus title to individuals who had given long service to PSU. And SIC is misinformed that this title carries with it the privilege of access to PSU recreational facilities; any retiree, with or without emeritus rank, historically has been permitted to use certain of these facilities.

The Report also hints at impropriety by suggesting that PSU officials improperly sold University property to the Second Mile for \$168,500 in 2001, which was the same price that the University paid to acquire the property in 1999. Freeh Report at 25, 79. But SIC cites nothing to establish any evidentiary connection between this sale of University real estate to Second Mile and the Sandusky incidents. In actuality, PSU often obtained or sold property to fulfill its mission. This was particularly encouraged by the donation of substantial grants of land by the Mellon Foundation of Pittsburgh over a period of years, with the intent that such lands either be used by PSU or sold to not-for-profit or charitable organizations in the community at fair market rates without profit to PSU. All such transactions were handled independently by PSU's staff real estate expert following independently-obtained assessments of the property value. The snide tone of SIC in discussing these matters is inappropriate.

### **C. Alleged Concealment of the 2001 Sandusky Incident**

As discussed above, the Freeh Report concludes that, in order to avoid bad publicity, PSU officials “repeatedly concealed critical facts relating to Sandusky’s child abuse,” thereby exhibiting “[a] striking lack of empathy for child abuse victims.” Freeh Report at 16. This scathing conclusion assumes, without acknowledging the assumption, (a) that McQueary explicitly reported a sexual assault to Paterno, Curley and Schultz, and (b) that Curley and Schultz reported a sexual assault to Dr. Spanier. Yet SIC never made an independent assessment of McQueary’s report, and instead relied solely on his preliminary hearing testimony, while

rejecting contradictory testimony. *See id.* at 66-68, 151 n. 252-n.273. The Report cites Dr. Spanier's assertion that he never heard a report about a sexual act involving a child or youth, yet gives no weight whatsoever to any of his testimony from a nearly five-hour interview during which Dr. Spanier answered every question posed by SIC or to any evidence that would exonerate him, including exculpatory evidence from Dr. Dranov and evidence that an extensive national security clearance review, commissioned in light of the Sandusky matter, was conducted in 2012, including interviews with some key individuals the Freeh Group did not interview, and Dr. Spanier's security clearance was confirmed.

Regarding McQueary's report to Paterno, Curley and Schultz, SIC failed to investigate crucial evidence by neglecting to interview Dr. Dranov, who heard McQueary's account of what he had seen in the Lasch Building showers just hours after the incident occurred, and who testified at Sandusky's criminal trial that McQueary told him that he had *not* seen any sexual abuse and had only heard ambiguous sounds. As noted above, the Freeh Report ignores this evidence, mentioning Dr. Dranov only once in a footnote, and even there, failing to explore the substance of his testimony. Freeh Report at 67 n. x ("John McQueary and his supervisor (a medical doctor) heard Mike McQueary's initial report of the Lasch Building events the evening it happened. John McQueary advised his son to report the matter to Paterno, and neither John McQueary nor his boss advised him to immediately call the police."<sup>9</sup>) (internal citations omitted). Moreover, the Freeh Report fails to explore the fact that Sandusky was acquitted of the charge of a single event of involuntary deviate sexual intercourse relating to the 2001 incident, *see* Verdict Slip at 2, which suggests that the jury may not have accepted McQueary's testimony

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<sup>9</sup> Again, not recommending that McQueary call the police is entirely consistent with Dr. Dranov's testimony that the incident described by McQueary was not of a sexual nature.

that he believed Sandusky “was having some type of intercourse” with the victim, *see* Freeh Report at 66 (citing 12/16/11 Preliminary Hearing Transcript at 13).

Regarding Schultz and Curley’s report to Dr. Spanier, the Freeh Report fails to acknowledge that there is *no* evidence that contradicts Dr. Spanier’s repeated statements since Day 1 that he was never told of any sexual activities involving Sandusky and a child. As Dr. Spanier stated in his interview with SIC and in a written statement to SIC (Freeh Report at 70), and as he told members of the Pennsylvania Attorney General’s Office in March 2011 (*id.* at 74), Schultz and Curley described the 2001 incident to Dr. Spanier as an employee having seen Sandusky “horsing around” or “engaged in horseplay” in a shower with a child, a description consistent with what Dr. Dranov reports that he heard McQueary originally say. None of the cited testimony or documents<sup>10</sup> suggests otherwise. Only Schultz or Curley could refute Dr. Spanier’s account of this meeting, and neither has done so. The resolution of the 1998 incident by the police and the District Attorney, which was only vaguely referenced to Dr. Spanier via email, is discussed above. Yet, inexplicably, the Report repeatedly – and erroneously – charges Dr. Spanier with knowledge of and participation in a sinister cover-up of a series of sexual assaults. These vicious and irresponsible charges cannot withstand scrutiny. The evidence shows that Dr. Spanier was directly informed of only one incident between Sandusky and a

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<sup>10</sup> The Report quotes from a March 2001 email exchange between Curley, Schultz and Dr. Spanier as an alleged conversation about Sandusky, *see* Freeh Report at 76 (citing Ex. 5H), but this email exchange clearly pertains to a situation involving a PSU basketball coach.

The Report also suggests that Curley, Schultz and Dr. Spanier met to devise an action plan “reflected in Schultz’s notes.” Freeh Report at 23. There is, however, no evidence to suggest that these notes, presumably Exhibit 5E, were taken during the meeting, as opposed to options that Schultz was considering or proposing before or after such a discussion. As Dr. Spanier told SIC, the only conclusions reached in the meeting in which he participated were to ban Sandusky from bringing minors to Penn State’s locker room facilities and advising the Second Mile president of the PSU’s directive and concerns.

minor and that he was not told that it was of a sexual nature; accordingly, there is no basis to conclude that Dr. Spanier concealed facts about sexual assaults to avoid bad publicity or exhibited a lack of empathy for victims of child sexual abuse.

The Freeh Report concludes that “[t]he avoidance of the consequence of bad publicity is the *most significant*... cause for this failure to protect child victims and report to authorities.” Freeh Report at 16 (emphasis added). SIC makes this inflammatory conclusion without a shred of evidence to substantiate it. In fact, with 96,000 students and 47,000 employees, PSU is accustomed to adverse publicity of some sort almost every day. This is especially true in matters surrounding high profile individuals and athletics. Even a casual historical review would have revealed that the PSU administration had a history of making difficult personnel decisions for a broad range of behaviors that were certain to result in adverse publicity. Faculty, administrators, staff, and students have been disciplined or terminated for sex discrimination, sexual harassment, and a broad range of criminal offenses. Many of these outcomes received adverse publicity.

## **CONCLUSION**

A careful review of the evidence alleged to support the scathing conclusions drawn by SIC reveals that the Freeh Report falls far short of being “an independent, full and complete investigation” of the response of PSU officials to allegations regarding Sandusky. The Report strives to create the appearance that it is a fair and comprehensive review of voluminous evidence. In actuality, SIC failed or was unable to interview nearly every key player in the relevant events, had limited access to PSU emails from relevant time periods, failed to evaluate the reliability of witnesses, and neglected to investigate facts that contradict the predetermined findings against Spanier, Paterno, Curley and Schultz.